

**IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Newport News Division**

PEGGY A. HALES,

Plaintiff,

v.

Case No.: 4:11cv28

CITY OF NEWPORT NEWS, et. als.

Defendants.

ANSWER OF DEFENDANT SERGEANT J.F. GAYLE

COMES NOW, Defendant Sergeant J. F. Gayle ("Gayle" or "Defendant"), through counsel, and responds to the Plaintiff's Complaint as follows:

1. Defendant admits that plaintiff lived at 150 Henry Clay Road in Newport News, but lacks sufficient information to admit or deny the remaining allegations in paragraph 1.
2. Defendant admits the allegations in paragraphs 2, 3 and 4.
3. Defendant admits that he, Officers Briggs and Johnson were Newport News Police officers on September 27, 2009, and were present at 150 Henry Clay Road for a time but denies the remaining allegations in paragraphs 5 and 6.
4. Defendant admits that on September 27, 2009, Plaintiff was present at 150 Henry Clay Road after Officer Briggs and Johnson arrived but lacks sufficient information to admit or deny the allegations in paragraphs 7 and 8.
5. Defendant admits the allegations in paragraph 9.
6. Defendant admits that Mr. Hales used a crow bar to force open a sliding glass door and upon entry to the house Plaintiff forcibly pushed Mr. Hales back in an effort to block his entry, whereupon she was arrested by Officer Briggs, and denies the remaining allegations in

paragraph 10.

7. Defendant admits that Officer Briggs placed handcuffs on Plaintiff and she was placed in a patrol car, but lacks sufficient information to admit or deny the remaining allegations in paragraphs 11, 12 and 13.

8. Defendant restates paragraphs 1 – 7.

9. Defendant admits he was acting under color of State law but denies the remaining allegations in paragraph 15.

10. Defendant restates paragraphs 1 – 9.

11. Defendant denies the allegations in paragraph 17.

12. Defendant restates paragraph 1 – 11.

14. Defendant denies the allegations in paragraph 19.

15. Defendant restates paragraphs 1 – 14.

16. Defendant denies the allegations in paragraph 21.

17. Defendant restates paragraphs 1 – 16.

18. Defendant denies the allegations in paragraph 23.

19. Defendant restates paragraphs 1 – 18.

20. Defendant admits the City owes a duty of reasonable care to all persons but denies the remaining allegations in paragraphs 25 - 27.

21. Defendant restates paragraphs 1 – 20.

22. Defendant denies the allegations in paragraphs 29 and 30.

23. Defendant restates paragraphs 1 – 22.

24. Defendant lacks sufficient information to either admit or deny the allegations in paragraph 32.

25. Defendant denies the allegations in paragraph 33.

Further answering, this defendant states as follows:

26. Plaintiff's conduct toward Mr. Hales was physical, threatening and hostile, pushing him back in such a way as to prevent him from entering the house, justifying the charge of assault and battery, requiring that she be handcuffed and placed under arrest.

27. Plaintiff's claims are barred by contributing negligence and participation in criminal conduct.

28. Neither Briggs nor Johnson used force that was in excess of that which was needed to place Plaintiff in handcuffs.

29. Defendant denies that he observed any misconduct by either Officers Briggs or Johnson, and denies that he heard Plaintiff complain that the handcuffs were too tight or hurting her.

30. Defendant denies that he is indebted to plaintiff in any sum.

31. Defendant's conduct was legal, objectively reasonable, and he is entitled to absolute or qualified immunity.

SERGEANT J.F. GAYLE

By: /s/ Stanley G. Barr, Jr.
Of Counsel

Stanley G. Barr, Jr., Esquire (VSB No. 7224)
sgbarr@kaufcan.com
Andrew K. Rudiger, Esquire (VSB No. 80884)
akrudiger@kaufcan.com
KAUFMAN & CANOLES, P. C.
Post Office Box 3037
Norfolk, VA 23514
Phone: (757) 624-3000
Fax: (757) 624-3169
Counsel for Defendant Sergeant J.F. Gayle

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing *Answer of Defendant Sergeant J.F. Gayle* is being filed with the Court's Electronic Filing System this 13th day of October, 2011, which will send a Notice of Electronic Filing (NEF) to the following users:

Allen J. Gordon, Esq.
Erik P. Gordon, Esq.
1553 S. Military Highway
P.O. Box 1756
Chesapeake, VA 23327
Counsel for Plaintiff

Darlene P. Bradberry, Esq.
Nicole M. Montalto, Esq.
Newport News City Attorney's Office
2400 Washington Avenue, 9th Floor
Newport News, VA 23607
Counsel for City of Newport News, James D. Fox and Neil A. Morgan

Alan B. Rashkind, Esq.
Furniss, Davis, Rashkind and
Saunders, P.C.
6160 Kempsville Circle, #341B
P.O. Box 12525
Norfolk, VA 23541-0525
Counsel for Justin E. Briggs

/s/ Stanley G. Barr, Jr.
Stanley G. Barr, Jr., Esquire (VSB No. 7224)
sgbarr@kaufcan.com
Andrew K. Rudiger, Esquire (VSB No. 80884)
akrudiger@kaufcan.com
KAUFMAN & CANOLES, P. C.
Post Office Box 3037
Norfolk, VA 23514
(757) 624-3000
(757) 624-3169 Facsimile
Counsel for Defendant Sergeant J.F. Gayle